

LOCAL GOVERNMENT PROPERTY INSURANCE FUND

ADVISORY COMMITTEE

MINUTES OF 10/11/01 MEETING

The meeting was conducted October 11, 2001 commencing at 9 a.m. at the City of Madison Engineering Service building, 1602 Emil Street, Madison, WI the following were in attendance:

Spencer Frieese, GAB Robins; Dan Bubolz, OCI; Eileen Mallow, OCI; Lynn Davis, CESA #6, Oshkosh; Glinda Loving, Milwaukee Metropolitan Sewerage District; Nicholas Evgenides, Brown County; Jim Trader, LGPIF; Dave Marchant, LGPIF; John Rath, Milwaukee County; Carole Charles, Outagamie County; Kevin Houlihan, City of Madison; Harold Rechelberg, Kewaunee County and the Town of Luxemburg; Vincent Marchetti, Town of Necedah and Juneau County; Laura Stauffer, Waukesha County; and, Pat Stevens, Town of Grand Chute.

Harold Rechelberg made a motion and Vince Marchetti seconded that the minutes be approved as submitted. Motion carried.

John Rath made a motion that the agenda be changed so a new chairperson could be elected prior to commencing the balance of the meeting. Harold Rechelberg seconded the motion. Motion carried.

John Rath made a motion that Kevin Houlihan be elected chair. Glinda Loving seconded the motion. Harold Rechelberg and Glinda Loving motioned that a unanimous ballot be cast for Kevin Houlihan. Motion carried.

Carol Charles nominated Vince Marchetti as vice chair. Glinda Loving seconded the motion. Motion carried. Harold Rechelberg made a motion that a unanimous ballot be cast for Vince Marchetti. Glinda Loving seconded the motion. Motion carried.

Eileen Mallow advised the Advisory Committee that the Department of Administration has affirmed the Office of the Commissioner of Insurance decision to appoint ASU as administrator of the Property Fund. Written notice will be sent to policyholders in the near future. Dan Bubolz advised that he has been discussing a transition plan with ASU. Aon will continue to respond to all administrative issues pertaining to the Fund until January 1, 2002. Claims will be "run off" by Aon and GAB Robbins.

A question was raised whether a suit brought by Aon would delay the transition. Eileen Mallow indicated that it would not. An injunction would have to be obtained via the courts in order to delay the transition.

Dan Bubolz advised ASU has its own claim staff which has been on "hold." An office will be opening in the Madison area. While underwriting may be done in Madison, ASU's home office is in Cumulus, Michigan.

Eileen Mallow discussed the August 31, 2001 letter sent by Commissioner Connie O'Connell to Bill Jeppson, then chair of the Advisory committee.

Nick Evgenides indicated he did not receive information on the actuarial request for proposal on a timely basis. Kevin Houlihan said he had sent out the RFP to Advisory Committee members and there may have been a small delay in his doing so. Nick requested that the response date for the RFP be pushed back a week in order to have time to review the document.

Nick Evgenides advised he felt OCI was only trying to appease the membership in meeting with Advisory Committee members and in having Connie O'Connell send out the letter of August 31, 2001. He hoped OCI would continuously review ways to improve service to Fund "members."

Dave Marchant provided an overview of the financial status of Fund. Handouts were provided to members in attendance. Of significant note is that surplus was reduced from \$23,501,00 as of June 30, 2002 to \$20,819,000 as of June 30, 2001 due to adverse loss history, changes in reinsurance program resulting in the Fund retaining more of its losses, and increased reinsurance premium. Losses have averaged between \$13,000,000 and \$14,000,000 per year over the past five years.

Financials will be updated on a quarterly basis. Access to financials will be available through the Fund's web page.

Dave Marchant gave a brief overview of the difference between a statutory financial statement versus a “GAAP” financial statement. The investment in bonds on a GAAP basis are recorded at market value whereas on a statutory basis they are recorded at amortized cost. The Fund’s surplus is therefore approximately \$500,000 less on a statutory basis than on a GAAP basis.

Nick Evgenides inquired as to when investment objectives were last reviewed. Dan Bubolz indicated about four years ago. Dan further advised that the Oversight Committee determines investment strategy decisions. Dan indicated that he will include a review of Fund investment guidelines in the agenda for the next Oversight Committee meeting.

Eileen Mallow indicated that the request for proposal with respect to reinsurance has not been sent out. Reinsurance markets are in a state of chaos due to the September 11, 2001 tragedy in New York. There is a possibility of extending the current contract. The reinsurance broker has advised that the reinsurers have expressed an interest in renewing the contract although premium may increase from 40 to 50%. Advisory Committee members indicated that given their knowledge of the reinsurance market, an extension of the contract would be appropriate. Dan Bubolz did indicate that a terrorist exclusion may now appear on our reinsurance contracts.

Eileen Mallow advised there is no money currently in the State's budget to conduct an actuarial study. The Joint Finance Committee is reviewing OCI's request for funds for this study and will provably approve funding for this study within a week or so. Eileen suggested that committee members contact Joint Finance Committee members that they may know in order to encourage them to approve this funding. The budget for the actuarial study is \$45,000 for the first year at \$30,000 for the second year.

John Rath raised an issue with respect to the actuarial study. On page 12 of the RFP, there is a suggestion that separate studies be done for counties, cities, etc. John inquired as to whether or not the Fund's objective was to have separate rates for each type of entity. Eileen indicated that was not the case. Eileen stated they were just looking at background information in doing the study.

Nick Evgenides referred to page 5 of the Request for Proposal for actuarial studies. There was a reference in the RFP to Flood and Earthquake coverage. Nick wanted to know why that was in the RFP since the Fund policy doesn't provide any coverage for those perils. Dan Bubolz advised that the reason it's in there is that the Fund's reinsurance contracts contain a \$20,000,000 limit for flood and earthquake type losses. While the Fund's policies are written with the intent to exclude coverage for flood and earthquake perils, the reinsurers wanted to make certain that if there was an adverse interpretation of our policy, that their exposure would be limited to \$20,000,000.

John Rath inquired as to why there were separate actuarial and “maximum probable loss” studies. He felt it would be cost efficient to combine the two studies and that it made sense to do so since determining maximum probable loss should be part of an actuarial study. Dan Bubolz indicated that funding for the maximum probable loss study does not have to be approved by the legislature and that is the reason for separating the two studies.

John Rath asked if Dan wanted to look at only particular buildings with respect to maximum probable loss or if he was looking at all of the insured properties in the Fund. Dan advised he thought it appropriate to look at larger building values.

With respect to the Valuation Project RFP, Dan Bubolz advised that language from former documents will be used. This should be sent out sometime in October.

Dan Bubolz advised that OCI had sent a letter to FEMA regarding the pilot project for “writing your own” Flood coverage. FEMA responded that they had more interest expressed in this project than originally thought. FEMA will respond as soon as possible.

Claims statistics were reviewed. Spencer Friese of GAB provided insight as to the type of losses being incurred. Of particular note is the fact that not only has frequency of claims increased, but the severity of losses has also increased. It seems that the

number of storms producing catastrophic losses has increased over the last five years versus any other time in Fund history.

Jim Trader gave a rough overview as to the rise of “mold” claims in the past year. Due to health related reasons and potential liability claims against building owners, experts are being brought in to manage repair and replacement activities which has dramatically increased repair costs. John Rath posed a question, “What are we going to do if courts say mold is covered”? Discussion then ensued regarding the difference between mold that is related to a “sudden and accidental” events (which probably would be a covered losses) versus mold that has manifested itself over a long period of time due to maintenance issues, construction defects, etc (which would probably not be covered losses).

Dan Bubolz then brought up the issue of the use of waivers of subrogation in contracts executed between our insured property owners and contractors. Laura Stauffer asked what brought the issue up. Eileen Mallow indicated that the Fund incurred losses due to the negligence of third parties, yet the Fund was precluded from pursuing subrogation against them due to the use of subrogation waivers. John Rath indicated there are many types of agreements (e.g. lease agreements) that cannot be executed without waivers of subrogation. Further, contracts that are typically used in new building construction and executed between owners, architects and contractors contain waivers of subrogation clauses. John Rath indicated that in reviewing Spencer Friese’s letter on

the subject, it appeared that the amount of potential recovery by eliminating waiver of subrogation clauses is rather small versus the amount of the losses being paid.

The consensus of the group was that policyholders would be handicapped if they had to use contracts not containing waivers of subrogation. No other insurance carriers require that subrogation rights be preserved, especially in new construction situations. In fact, the waiver of subrogation clause goes back to the standard fire policy issued in 1943.

Nick Evgenides indicated that Jim Trader has assisted him in the past in developing verbiage eliminating waivers of subrogation in certain contracts, when practical. Nick felt guidelines should be developed to educate policyholders who are uninformed of the issue. Dan Bubolz indicated that articles and newsletters from the Fund would serve this purpose.

It was suggested that a sub-committee review the subject of waivers of subrogation in further detail. Sub-committee members were not identified.

Carole Charles indicated that they will hold the subject of loss control service in abeyance pending ASU becoming administrator. She felt it would be of no avail to have Aon implement loss control programs if a new contractor takes over in a couple months.

Advisory Committee members advised that they, as policyholders, would like to receive complete financial reports. The group was advised that the reports are rather lengthy and probably contain data they would not want to review. It was determined that a copy of the annual report would be given to the Advisory Committee chairperson who can then distribute the report to whomever requests a copy.

The Advisory Committee also requested that minutes be posted on the web. It was determined that a draft of the minutes should be sent to the Advisory Committee membership. After approval by the Advisory Committee, the minutes will then be posted on the web.

Carole Charles advised that the claim form available on the network on a “pdf” basis cannot be used to populate claim information and report a claim. This is apparently on a “read only” basis. She would like to see the Fund move in the direction of enabling policyholders to file claims electronically.

John Rath indicated that requests for proposals need to be developed on a more timely basis. Further, committee members need 30 to 60 days prior to distribution of any RFP to vendors in order to make comments.

Jim Trader provided a brief comparison of Fund policy coverage forms to those of ISO and other carriers. Several members advised they would like to see the contractors equipment segment of the Valuation Project policy increased to a higher limit.

Currently, scheduling of contractors equipment, as you find in the policy, is not needed for equipment having a value of \$5,000 or less.

Several members thought it would be advisable to provide blanket coverage for contractors equipment versus having to schedule this equipment. This topic should be included in Request for Proposals for reinsurance and actuarial studies.

Laura Stauffer advised that many people are concerned about Business Interruption coverage. She advised that many public entities may not recognize the fact that they do have a business income exposure. She thought a seminar on the subject would be worthwhile. Jim Trader offered to assist in developing this seminar.

Jim Trader also suggested that the forms used to provide Business Income coverage be reviewed. The Fund is authorized to use any ISO forms that are currently in use. However, it may be worthwhile for the Fund to develop a specific coverage form(s) given the unique characteristic of public entity Business Income exposures.

Eileen Mallow discussed the procedure insureds must follow in resolving coverage disputes with the Fund. Policyholders do not have a right to try coverage issues in circuit or other courts. Rather, the dispute must be reviewed by the agency. In order to try to be fair, an agency administrative process is being developed for the Fund with a separate Administrative Law Judge being assigned to Fund cases.

Nick Evgenides stressed that policyholders need a right to go to court on coverage issues. He felt the Fund controls the review committee. Nick indicated that he had first-hand experience in dealing with the Fund with respect to a coverage dispute and felt more independence should be brought into the picture.

John Rath indicated that while the Fund is not an insurance company, it uses insurance company forms and should, therefore, be subject to court interpretation of policies in the event of disputes.

Jim Trader suggested that the policies need to be changed to reflect the fact that disputes need to go through an administrative process versus a court process.

Several members then complimented Aon, General Adjustment Bureau, Marchant Consulting and other Aon subcontractors for the fine work that they have performed on behalf Fund policyholders. Several individuals indicated that the current administrator has been very efficient, knowledgeable and helpful and has performed "above and beyond" that which had been asked of them.

The next meeting will be held on April 16, 2002 at a location and time to be determined. Harold Rechelberg motioned and Vince Marchetti seconded that the meeting adjourn. Motion carried.

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